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January 31, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, for Provision of In-Region InterLATA Services in Texas, CC Docket No. 00-4

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original, six paper copies, and a diskette copy of the Comments of NorthPoint Communications, Inc.

Please date stamp the additional copy provided herewith for that purpose and return the same to the bearer. Thank you for your assistance.

Sincerely,

Valerie Yates

Enclosures

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC. 20554

In the Matter of

Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, for Provision of In-Region InterLATA Services in Texas	)	CC Docket No. 00-4

COMMENTS OF

NORTHPOINT COMMUNICATIONS, INC.

NORTHPOINT COMMUNICATIONS, INC.

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January 31, 2000

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I. Introduction and Summary

NorthPoint Communications, Inc. ("NorthPoint") is a national Competitive Local Exchange Carrier (CLEC) providing high-speed data services over digital subscriber lines (DSL) to consumers in more than 1,000 cities across the nation. NorthPoint was the first DSL CLEC to provide services in the Texas market and has the longest and largest experience in pre-ordering, ordering, and provisioning DSL-capable unbundled loops in the Texas market from Southwestern Bell Telephone (SWBT).

Unlike the prior application by Bell Atlantic – New York, where BA-NY and CLECs such as NorthPoint had an opportunity to scrutinize and reconcile performance data – the SWBT application is devoid of meaningful information about the state of DSL loop provisioning in Texas. Whereas Bell Atlantic provided daily recapitulation reports to NorthPoint that permitted NorthPoint to track and evaluate Bell Atlantic's loop performance, SWBT provides no such information to CLECs in Texas. Whereas Bell Atlantic worked closely with DSL CLECs to resolve discrepancies to ensure that loop orders were complete, no such process has taken place in Texas. Accordingly, the Commission, unlike when considering Bell Atlantic's application, has no credible data to assess accurately SWBT's performance in facilitating advanced services competition.

The absence of meaningful data regarding SWBT's provisioning performance goes back many months. Until September 1999, SBC only provided less suitable ISDN-capable loops to DSL CLECs, despite the Commission's order, a year earlier in August 1998, that required ILECs to provide DSL-capable loops. As a result, the "DSL test" performed by Telcordia in June 1999 reflected only the most cursory information about SWBT's systems for providing DSL loops, but no real-world experiences. Moreover, the

test was based on only a handful of phantom loop orders placed on SWBT's interim, fax-based ordering system, bearing no data about SWBT's ability to meet the substantial volume in loop orders it is beginning to receive today.[1] It surely provides no basis for assessing SBC's recent performance in provisioning the hundreds of DSL loop orders pending today.

Second, SWBT's application, based on the accompanying "DSL performance measures," fails to support SWBT's claim that it is performing adequately with regard to DSL loops. Rather, despite the fact that SWBT is now receiving hundreds of DSL loop orders each month, SWBT's critical DSL performance claims are based on incomplete and incomprehensible data. **For example, though NorthPoint has submitted more than 900 DSL loop orders in Texas since they were made available, SWBT calculates its loop installation interval based on *zero* NorthPoint loop orders, and only 164 for the whole industry.** SWBT's failure to provide meaningful data, first to the CLECs themselves, and now to this Commission, differentiates its application from the more comprehensive data provided to CLECs and the record presented in the Bell Atlantic application last year.

This application cannot proceed on the present record. Rather, in order to facilitate the Commission's review and ensure that both SWBT and NorthPoint have an accurate picture of DSL loop performance in Texas, it is essential that SWBT, together with third parties, conduct a brief and intensive evaluation of SWBT's DSL performance. This test could commence immediately and yield a verdict before the record is closed on

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[1] See, NorthPoint Comments of October 13, 1999, Operations Support Testing Relating to the Investigation into Southwestern Bell Telephone Company's Entry into the Interlata Telecommunications Market in Texas, Project 20000

this application. This test will either confirm or rebut SWBT's claim – unsupported in this record – that it's DSL performance is adequate to meet the requirements of Section 271. The claims by CLECs and SWBT regarding the state of loop provisioning in Texas must be reconciled to permit an evaluation of what SWBT is *really* doing with DSL loops in Texas before this record is closed.

In the absence of such a conclusive determination, the Commission must find that SWBT has failed to provide nondiscriminatory access to OSS and unbundled loops. SWBT's current provisioning system, which uses a hodge-podge of systems and interfaces, faxes and emails, is already severely strained and set to be eliminated by the terms of a recently completed arbitration decision in Texas. As NorthPoint's experience in utilizing these systems to deliver even the modest volume of services it has provided to date demonstrates, SWBT's present OSS and loop provisioning practices effectively deny competitive LECs access to OSS and unbundled DSL loops. Consequently, SWBT has yet to satisfy its obligation to open its market to competition for the provision of advanced, broadband services.

II. SBC Fails to Demonstrate Compliance with Requirements of Section 271

A. SBC Must Meet its Burden of Demonstrating Compliance with the Pro-Competitive Requirements of the Act's 14-point Checklist

In order for the Commission to grant SBC's application for authority for SWBT to provide in-region interLATA service in the state of Texas,[2] the Commission must find

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[2] Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Telephone Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, *Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas* (filed Jan. 10, 2000) ("SBC-Texas 271 Brief").

that: (1) SWBT has fully implemented the competitive checklist set forth in section 271(c)(2)B) of the Communications Act of 1934, as amended;[3] (2) the requested authorization will be carried out in accordance with the requirements of section 272; and (3) the requested authorization is consistent with the public interest, convenience and necessity.[4]

With respect to the checklist items, SWBT must demonstrate, among other requirements, that it provides nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 251(d)(1)[5] and local loop transmission from the central office to the customer's premises, unbundled from switching or other services ("unbundled loops").[6] The Commission found that nondiscriminatory access to network elements includes access to the operations support systems, including the systems, databases, and personnel, used by the incumbent local exchange carriers (LECs) to provide service to their customers.[7] In addition, the Commission established that the obligation to provide access to unbundled loops includes

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3 47 U.S.C. § 151 et seq., as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

4 47 U.S.C. § 271(d)(3).

5 47 U.S.C. § 271(c)(2)(B)(ii).

6 47 U.S.C. § 271(c)(2)(B)(iv).

7 Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, *Memorandum Opinion and Order,* CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999). ("BA-NY 271 Order") at

83.

the obligation to provide access to unbundled loops capable of supporting xDSL technologies.[8]

With respect to the public interest requirement, the Commission reviews the circumstances presented by the application to ensure that no other relevant factor exists that would frustrate the Congressional intent that local markets be open to competition, including whether the Commission has sufficient basis to conclude that that local markets will remain open after grant of the application.[9] In this regard, it is particularly important that SWBT demonstrate a sufficient track record with regard to competition in the DSL sector to show that competition in this area is "irreversible."

1. SWBT Must Demonstrate Nondiscrimination in the Provision of Access to DSL Loops and Operation Support Systems

In the Bell Atlantic New York 271 proceeding, the Commission established that applicants would be expected to "make a separate and comprehensive showing with respect to the provision of xDSL capable loops, either through proof of a fully operational advanced services separate affiliate . . . or through a showing of nondiscrimination in accordance with the guidance provided herein."[10] The Commission found that "the creation of a separate affiliate for the provision of retail services may provide significant evidence that a BOC complies with the nondiscrimination requirements of the competitive checklist."[11] In the absence of a "fully-operational"

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8 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("Local Competition First Report and Order") at 15691.

9 BA-NY 271 Order at ¶ 423.

10 BA-NY 271 Order at ¶ 330.

11 BA-NY 271 Order at ¶ 331 (emphasis added).

separate affiliate, however, the Commission stated that applicants would be required to establish "by a preponderance of the evidence" that it provides xDSL-capable loops to its competitors in a nondiscriminatory manner.[12] In addition, the Commission stressed that any showing must be buttressed by "unambiguous performance standards and measures."[13]

2. SWBT Cannot Rely Upon Its Planned Implementation of a Separate DSL Affiliate to Meet its Burden of Demonstrating Nondiscrimination.

In its application, SBC argues that it is "able to show that it already has established a fully operational, structurally separate affiliate to provide advanced services in Texas.[14] SBC claims that SBC Advanced Solutions Inc. ("ASI") is "already operating in compliance with the same operational requirements to which Bell Atlantic prospectively committed in connection with its 271 application, although Southwestern Bell is months ahead of Bell Atlantic in implementing them."[15]

SWBT's reliance on its plans to provide advanced services through its affiliate, ASI, is premature . Although SBC ASI may currently provide advanced services in other states, it is not doing so in Texas.[16] Thus, while NorthPoint welcomes the full implementation of the affiliate as soon as practicable, SBC's plan to provide advanced services through a separate affiliate cannot be said to demonstrate that it was providing

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12 BA-NY 271 Order at ¶ 333.

13 BA-NY 271 Order at ¶ 334.

14 SBC-Texas 271 Brief at p.43.

15 SBC-Texas 271 Brief at p.43.

16 Southwestern Bell Telephone Company, Transmittal No. 2804, Tariff F.C.C. No. 73 (issued Jan. 12, 2000).

xDSL-capable loops on a nondiscriminatory basis in Texas at the time that its 271 application was filed. [17]

3. SWBT has failed to provide adequate performance data to demonstrate that it provides nondiscriminatory access to DSL loops and OSS.

In the absence of a fully-functioning separate affiliate, SWBT must be held to demonstrate by a preponderance of the evidence that it meets the requirements of section 271 of the Act in its provision of access to xDSL-capable loops and OSS. SWBT's data must be specific and verifiable[18] and DSL specific"[19]

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[17] Moreover, SWBT's "implementation" of the separate affiliate requirement in the Merger Conditions continues to frustrate both the letter and spirit of those conditions. Because SWBT and ASI failed to adequately set forth the terms of interconnection in their proposed Texas Interconnection Agreement, NorthPoint and other CLECs have been forced to protest that agreement in Texas for having failed to comply with the requirement in paragraph 5 of the Merger Conditions relating to what matters must be included in the interconnection agreement. By failing to adequately document in the Interconnection Agreement all of the terms of interconnection, unbundling, and telecommunications services that the ILEC is providing to the affiliate – including access to shared lines, subloops, and remote terminal collocation – SWBT and ASI flout the very purpose of the merger conditions and the affiliate: to ensure that the relationship between the ILEC and its retail affiliate see the light of day and that competitors get equal and early access to whatever UNEs, interconnection arrangements, or services that the incumbent offers its own retail DSL affiliate. Further, SWBT continues to ignore this requirement despite the unambiguous determination by the Commission's Common Carrier Bureau that the absence of such specifics in the Interconnection Agreement defy the Merger Conditions' requirements. (Letter of Lawrence Strickling, CCB, to Janette Leuhring, Kansas Corporation Commission, January 17, 2000 ["[I]nclusion of information about the Interim Line Sharing arrangements is necessary to show that the affiliates operate at arm's length, and to inform the Commission, state commissions, and the public about important operational aspects of the relationship."].) By ignoring this mandate and continuing to provide Interim Line Sharing to the affiliate pursuant to a noncompliant side agreement, SWBT's "implementation" of the affiliate requirement reneges on the Merger Conditions' promise to "reduce the ability of a BOC to discriminate against competing carriers" and to "ensure a level playing filed between the BOC and its advanced services competitors." Merger Conditions ¶ 332.

[18] 47 U.S.C. § 271. The Commission stated that it would expect a BOC to demonstrate nondiscrimination, preferably through the use of state or third-party verified

The "preponderance of the evidence" test set forth by the Commission for ILECs can be satisfied by relying on performance standards adopted by the relevant state commission.[20] However, to successfully satisfy its burden an ILEC must provide "unambiguous performance standards and measures" to demonstrate that it is offering its wholesale services in the same time and manner as its own retail services, or in such a way to offer competitors a meaningful opportunity to compete.[21] The Commission has determined that DSL-specific, state-adopted performance measurements and verified performance data create the presumption of "unambiguous performance standards and measures." Id.

The data provided by SWBT to demonstrate compliance with the obligation to provide nondiscriminatory access to OSS and DSL loops is flawed on its face and cannot support the conclusion by SWBT that it is providing nondiscriminatory access to OSS and DSL loops. Specifically, NorthPoint's review of the data filed by SWBT with its application, as well as performance reports SWBT provides to NorthPoint pursuant to requirements of the Texas Commission, reveals that key performance metrics are based on erroneous and inconsistent data that undermine their value substantially.

Although in her affidavit Ms. Chapman claims that SWBT has provisioned more than 900 DSL loops to DSL CLECs in Texas since SWBT finally made such loops

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data, with respect to provisioning intervals, missed due dates, quality of loops, maintenance and repair functions, and access to OSS. BA-NY Order at ¶ 335.

19 *See* BA-NY 271 Order at ¶ 48.

20 BA 271 Order at ¶ 333.

21 BA 271 Order at ¶¶ 334, 335

available in October 1999,[22] the data points upon which SWBT relies to demonstrate nondiscrimination in the Dysart Affidavit are inconsistent with and cannot support the conclusions in the Chapman Affidavit and the SWBT Application.

SWBT's performance claims for DSL loops rely upon the State-sanctioned performance reports, from which the statistical conclusions in the Dysart affidavit are drawn.[23] But any conclusions based on SWBT's accumulation of DSL-specific performance data cannot be trusted, for those data are wrong. For example, in the reports on performance measures covering NorthPoint-specific performance, the report for Performance Measure 55.1 (Average Installation Interval- DSL), shows that NorthPoint has ordered ***zero*** DSL capable loops in any geographic market at any time in the previous three months. (See Mailloux Aff., Attachment 1.) The reality is that NorthPoint has been ordering DSL capable loops since September 1999 and has ordered more than 1,000 such loops since the time they were made available in Texas in September 1999.[24] Because NorthPoint is the most active DSL CLEC in Texas in terms of order volume, any

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22 Chapman Aff. at ¶ 4. Contrary to SWBT's claim that DSL CLECs' "did not request Digital Subscriber Line capable loops in any significant quantity until September, 1999," (SWBT Brief at 39), the reality is that SWBT refused to make such loops available – despite repeated protests from DSL CLECs – for more than a year after such loops were unambiguously required to be made available in the Commission's August 1998 Advanced Services Order. See Memorandum Opinion and Order, In the Matter of Deployment of Wireline Services Offering Advanced Services Capabilities, August 6, 1998, CC Docket 98-147 at ¶ 52. See also, Lewandowski Affidavit at paragraph XX.

23 Dysart Aff. at ¶ 14

24 Before October 1999, NorthPoint had been ordering ISDN loops for its DSL service. Once DSL loops became available, NorthPoint began using them for almost all of its orders. While the Chapman affidavit only indicates 960 total DSL capable loops have been *provisioned* in Texas for all CLECs, NorthPoint's figure includes *all orders submitted* to SWBT by December 31. See Lewandowski at ¶5.

conclusions about DSL loop provisioning that ignore every one of NorthPoint's DSL loop orders in Texas must be dismissed as unreliable.

The problems are not isolated to NorthPoint. The mistakes in the calculation of NorthPoint data also appear to infect the aggregate CLEC reports. For example, the CLEC aggregate performance report for Texas, show a total of 164 DSL capable loop orders for all CLECs for August 1999 through December 1999.[25] Like the NorthPoint specific data, this figure appears to bear no relation – though it should – to the figure used to calculate Average Response Time for Loop Makeup, which shows 2019 requests for loop makeup in the same exact time period as SWBT shows 164 DSL capable loop orders.[26] The error is duplicated in SWBT's "FCC reports," attached. There, for Average Installation Interval for DSL, SWBT also claims that there have only been a total of 164 loop orders for the entire state of Texas for all CLECs from August 1999 to December 1999.[27]

The data failures in SWBT's DSL measurements are apparent even in the documents provided in support of its Application – that is, without resort to the CLEC specific reports that SWBT did not file but which demonstrate the flaws outlined above. For example, although the Chapman Affidavit claims that SWBT has provisioned nearly 1,000 DSL-capable loops in Texas,[28] attachments G and R to the Dysart affidavit indicate

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25 Mailloux Aff. Attachment 2.

26 Other accountings used in the loop performance measures are highly suspect. For example, the data for loop makeup requests shows the exact same amount of loop samples, 788, in both Dallas/Ft. Worth and Houston – a nearly impossible coincidence that suggests further and deeper data collection and reporting inadequacies. See Mailloux Affidavit Attachment 2.

27 Mailloux Aff. Attachment 2.

28 Chapman Aff. at ¶ 4.

that for almost all of the DSL performance measurements there was an insufficient sample size to validate the data – or less than 10 loops.[29] Ironically, SWBT complains that in many instances it is the small sample size itself that skews parity measurements,[30] whereas the reality is that these small samples overstate SWBT's quality of performance by undercounting the volume of loop orders more than 100 fold. SWBT's failure to adequately account for and report DSL loop orders in its performance reports distorts the reality of DSL competition in Texas.

This facial and substantial inconsistency in the data means that SWBT has failed to meet its burden to demonstrate by reference to "unambiguous performance standards and measures" that it is providing nondiscriminatory access to OSS and DSL loops.

Some of the measures that SWBT points to as demonstrating compliance with its 271 obligations are still in flux. For example, for Performance Measure 57 (Average Response Time for Loop Qualification), SWBT was initially only reporting the time it takes its internal process to start and finish a loop qualification, but did not include the time it took to receive and process the CLEC request for loop qual nor did it include the time it takes to return the loop qualification results back to the CLEC. In NorthPoint's experience, this is where much of the delay lies and SWBT's failure to account for the whole of the process significantly understated the delays attributable to SWBT's manual

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29 According to the Dysart Affidavit, his reports indicated an insufficient sample size if there were fewer than 10 orders counted in a performance measurement. Dysart ¶82. The performance data included in Attachments G and R use the indicator of "Base < 10" if the sample size is less than 10. 38 out of the 60 DSL specific measurements for November 1999 had a Base < 10. Dysart Attachment R. These measurements are not counted in SWBT's claim that it met its benchmark in 92% of the cases. Dysart ¶79.

30 Dysart at ¶¶ 6, 18, 33.

ordering and provisioning process.[31] SWBT has agreed, going forward, to make this measurement more accurate by taking account of the entire process to better reflect is actual performance, but SWBT has not verified that the performance measures submitted with the application reflect this important changet.[32] Any data about the delays in SWBT's loop qualification process gathered prior to these changes would be an inaccurate barometer of the challenges faced by DSL CLECs in Texas.

This data must be reconciled promptly if SWBT is to have any opportunity to demonstrate that it has satisfied the checklist. NorthPoint and other CLECs can, with SWBT's cooperation and the assistance of third-parties, quickly evaluate the current and actual state of affairs with regard to SWBT's DSL performance.[33]

Finally, even were the Commission to ignore the problems that underlie SWBT's performance conclusions and accept on their face the conclusions in the Dysart affidavit about provisioning intervals, the Commission still must conclude that SWBT's performance in providing access to OSS and in provisioning DSL loops is inadequate. Taken at face value, the Dysart affidavit still shows many **average** installations are well above the required contractual intervals. For example, the 11 day average interval in Houston in November for performance measurement 55.1 exceeds the permitted interval

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31 Lewandowski Aff. at ¶ 7.

32 Chapman Aff. ¶6

33 While the record is generally deemed closed upon the date of the application, parties should be permitted to supplement the record to ensure that the Commission has an accurate snapshot. "The applicant, however, may submit new factual evidence if the sole purpose of that evidence is to rebut arguments made, or facts submitted. But in no event shall such evidence post-date the filing of the relevant comments." Public Notice, UPDATED FILING REQUIREMENTS FOR BELL OPERATING COMPANY APPLICATIONS UNDER SECTION 271 OF THE COMMUNICATIONS ACT (September 28, 1999).

of seven days; the 31 day average interval for conditioned loops in Houston exceeds the contractual cap of 15 days. Also, Performance Measurement 58-09 shows that in November, SWBT missed its due dates for DSL capable loops half as often for their own loops as they did for DSL CLEC loops in Dallas. (Dysart Attachment R.) Based as they are on minimal and inaccurate data, these exceptions substantially understate the actual delays and difficulties that occasion the pre-ordering, ordering and provisioning of DSL capable loops in Texas today.

B. SWBT's Performance with Regard to Preordering, Ordering, and Provisioning DSL-Capable Loops Remains Problematic

The Commission has determined that a BOC must demonstrate "commercial readiness" and that it has operation support systems capable of handling both current and reasonably foreseeable demand volumes.[34] The primary indicator of whether a BOC has demonstrated such commercial readiness is "actual commercial usage."[35] Thus, the most probative evidence of SWBT's OSS capabilities is the experience of CLECs in utilizing those OSS to attempt market entry.

SWBT has not demonstrated the capability to meet current, let alone reasonably foreseeable and substantial future demand for the provisioning of DSL-capable loops in Texas. This failure effectively denies NorthPoint and other CLECs meaningful access to loops, in contravention o the checklist. Indeed, that SWBT's Performance Data should be flawed is not surprising, given that SWBT's data collection processes – like those OSS processes used for pre-ordering, ordering and provisioning DSL-capable unbundled loops – are highly manual and extremely error prone. Contrary to the representations made by

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34 BA-NY 271 Order at ¶89.

SWBT in its application, NorthPoint's experience in attempting to provide Advanced Services in Texas still suffers in a number of material respects. Indeed, because of the difficulties SWBT faces in meeting even the small current demand for DSL loops using its manual processes, less than 50% of NorthPoint's loop orders are provisioned on time and with unnecessary but frequent problems.[36]

SWBT's manual DSL preordering, ordering, and provisioning processes break down frequently at a number of critical points:

NorthPoint's orders are often erroneously rejected.

> Even before NorthPoint's orders go through loop qualification they may be rejected. Because SWBT service representatives must manually re-key NorthPoint's orders into its SORD system, the orders are plagued by unnecessary but unsurprising typographical errors. Those errors cause NorthPoint's orders to be rejected, forcing NorthPoint to fix SWBT data errors and resubmit orders. This would be eliminated in a flow-through system that avoids manual order re-entry. Obviously these errors cause delay in NorthPoint's ability to serve the customer, but it also makes it difficult for NorthPoint service representatives to track the orders to maintain accurate performance measurements. (Lewandowski Aff., ¶¶ 24-25.)
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> Even once an LSR is accepted by SWBT, the loop qualification process can cause rejects. As discussed above, some rejects are due to data integrity errors. However, some rejects are designed into the system. For example, SWBT uses draft T1E1.4 loop length limitations to make a unilateral determination whether a loop is too long to handle the type of DSL service NorthPoint wants to offer. If, in SWBT's estimate, the loop is too long, SWBT automatically rejects the loop order, forcing NorthPoint to supplement the order to override SWBT's unilateral loop limits and to provision the loop to the end user.[37] (Lewandowski Aff., ¶¶ 26-27.)

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35 Id.

36 Lewandowski Aff. at ¶ 7.

37 SWBT has recently proposed to implement a policy that allows NorthPoint to put a code on the LSR to tell SWBT up front that it will take the loop "as is" without permitting SWBT to reject the loop. Chapman Aff. ¶ 6, 39. This is an interim fix to address the fact that SWBT was enforcing unilateral loop limitations on NorthPoint that were declared unlawful in the Commission's recent Advanced Services Order and by the Texas Commission Staff. Arbitration Award, *Petition of Rhythms Links, Inc for*

An order may also be rejected when it has been delayed after loop qualification because the loop qualification data has "expired" pursuant to SWBT's own 20-day loop qualification expiration policy. This policy will cause a reject where SWBT's own conditioning process exceeds the 15 day interval. If the order sits idle for longer than 20 days after the loop qualification is performed, SWBT rejects the loop order outright because the loop qualification has been deemed to "expire." Chapman at ¶39. This forces NorthPoint to recommence the provisioning process on an order that may have been "in process" for more than a month. (Lewandowski Aff. ¶ 27.)

SWBT's loop prequalification and qualification databases are often inaccurate.

NorthPoint uses SWBT's prequalification and qualification processes for every loop order to determine, in advance of provisioning, what kind of services a NorthPoint customer can hope to receive. SWBT offers a pre-order database that provides real-time access to information about loops. It includes theoretical or calculated loop length, copper/fiber probabilities and a Red/Yellow/Green designation based on SWBT's own ADSL product. In the loop ordering process, SWBT also requires that loops undergo a manual qualification process that yields fax-based information to NorthPoint in 3-5 business days with more loop detail such as actual loop length, loop gauge, copper/fiber designation, load coils, bridge tap, repeaters or DAMLs and other disturbers. This process also allows NorthPoint to assess the services it can offer, and SWBT – improperly – also uses this information to determine whether the services NorthPoint wishes to offer "qualify" on a given loop. Chapman ¶¶ 39-42.

NorthPoint relies on the data received through both the loop prequalification and loop qualification processes to assess its service offering capabilities and trigger internal ordering processes. Often, the information obtained from SWBT in prequalification and loop qualification is wrong. For example, in some instances the prequalification tool will show the loop is served on copper. After telling the end user that he or she is "service-eligible" and awaiting a 3-5 day further process, SWBT will retract its conclusion to reveal that the loop is only served by fiber, limiting NorthPoint to its slower speed IDSL service. (Lewandowski Aff., ¶ 11.)

Similarly, the data obtained after the 3-5 day qualification interval may indicate that a loop needs conditioning – requiring a 15 business day provisioning delay – only to discover once the technician is dispatched and the order is delayed, that it

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Arbitration to Establish An Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20226, *Petition of DIECA Communications, Inc. d/b/a/ Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 20272, November 30, 1999 ("Texas Arbitration Award") at 39.

does not need conditioning and could have, should have, been provisioned on a far shorter interval. Each time, flawed reports from SWBT cause NorthPoint to upset customer expectations, undermine confidence, and impair the perceptions of consumers that competition in Texas is working. (Lewandowski Aff., ¶¶ 12-14.)

SWBT often misses its 3-5 day loop qualification interval or fails to provide required loop qualification data.

Many times, SWBT does not return the loop qualification information within the 3-5-business day interval from receipt of a valid LSR. This also causes delay in NorthPoint's receipt of the Firm Order Confirmation since that is not returned until 24 hours after loop qualification is complete. NorthPoint's service representatives rely on timely receipt of both the loop qualification and firm order confirmation to continue the next steps in the process and to communicate with our sales team and account managers so they can provide more information to the end user customer. Delays in these crucial points of the ordering process make it very difficult for NorthPoint to properly track and process the orders. (Lewandowski Aff., ¶ 17.)

SWBT unilaterally changes the installation date on NorthPoint loop orders without NorthPoint approval or notifying NorthPoint

Once SWBT returns a Firm Order Confirmation with an installation date, NorthPoint will enter that date into its systems. NorthPoint relies on the SWBT Firm Order Confirmation due date to communicate with its end user when to expect service. However, NorthPoint cannot always rely on this Firm Order Confirmation date because SWBT may unilaterally change this date, even without informing NorthPoint. Customers who expect timely service are disappointed, and NorthPoint is required to "escalate" orders to learn that SWBT has set a new date without notice. (Lewandowski Aff., ¶¶ 28-31.)

Even when the due date has not been changed, SWBT does not consistently meet its 5-7 day or 10-15 day provisioning intervals. This is usually due to problems with the loop itself. Significantly, once SWBT has missed its initial interval it no longer has the incentive to meet its performance measurements, and once a loop is missed it may take weeks to complete an installation (Lewandowski Aff., ¶ 22.)

SWBT is aware that its systems for the preordering, ordering and provisioning

DSL loops are flawed and has promised on a number of occasions to undertake specific

measures to enhance processes to eliminate extended delays and errors.[38] These remain unsolved even in the short term, and cannot be meaningfully addressed until SWBT migrates to appropriate electronic flow-through systems capable of handling the reasonably foreseeable and substantial growth in demand for DSL capable loops.

C. SWBT's Current and Highly Manual Pre-Ordering, Ordering and Loop Provisioning OSS for DSL-capable Unbundled Loops Cannot Meet Current or Future Demand

SWBT's current process for pre-ordering, ordering and provisioning DSL loops is a system designed around SWBT's own ADSL product, capable of handling only low volumes of loop orders, and cannot and will not scale in its present configuration to permit DSL CLECs in Texas a access to unbundled loops as required by Section 271©(2)(B)(ii). (See Lewandowski Aff., ¶ 6 for a description of the current processes in Texas.)

The errors that are generated by the manual loop pre-ordering, ordering, and provisioning systems in Texas are substantial and will defeat robust, high-volume consumer deployment of DSL broadband services. For example, orders placed twice for the same end user loop can yield different results – once rejected on the claim that the loop could not support DSL service, next installed without incident, on the same loop to the same end-user – without explanation. (Lewandowski ¶ 13.) Loop qualification may advise NorthPoint that end-user loops are copper-based, only to find after weeks of

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38 Lewandowski Aff. ¶ 34 and Attachment 1. In this letter, NorthPoint confirmed a number of specific assurances by SWBT to fix issues that have continued to vex DSL loop ordering in Texas. To date, SWBT has not undertaken to complete these changes and has only very recently advised that it has any means in place to do so. See Johnson letter, Lewandowski Aff. Attachment 2.

waiting that they are fiber-based. (Id., ¶ 14.) Conditioning requests from NorthPoint await execution, only to morph into "no facilities" rejects from SWBT. (Id., ¶ 15.) Loop qualification reports are delayed for unexplained reasons, sometimes more than a week after the date a loop should be installed, before SWBT installs the circuit and completes the order – again, no reason. (Id., ¶ 18). FOCs – due to be received 24 hours after loop qualification, are sometimes withheld for weeks, and installation commitments bypassed, without any notice to NorthPoint. (Id. ¶ 19.)

The manual notice process permits egregious errors that would be eliminated by a purely electronic, flow-through system. For example, NorthPoint service representatives awaiting information on a NorthPoint loop order get Covad loop qualification reports, and presumably vice-versa. (Id., ¶ 20.) Requests for conditioning are sent to SWBT, only to find that the SWBT provisioner failed to pass the engineering order to the field, so the orders stall. (Id., ¶ 22.) The combination of the manual re-keying of orders by SWBT personnel and the 20-day expiration period result in loop orders that, once botched by the SWBT order-entry personnel, are forced out of the queue for having failed to complete within the policy interval – all without any fault of the CLEC. (Id, ¶ 25-27.) SWBT changes installation commitment dates without advising NorthPoint because the system is not designed to do that; as a result NorthPoint, SWBT and the end user all become frustrated at increased escalations as all parties attempt to chase down a loop order gone awry. (Id., ¶ 30.)

The hodgepodge of systems, interfaces, faxes, emails and handwritten notes that constitute the current ordering process will, and frequently do, fail. It is for this reason that SWBT is required, pursuant to a recent arbitration ruling, to substantially revamp all

of its pre-ordering, ordering and loop provisioning systems to meet DSL CLEC requirements. Texas law, and the orders of this Commission.[39] Until these changes are implemented, it is unlikely that SWBT will be able to meet is burden of demonstrating adequate commercial capability to meet current and foreseeable demand for unbundled DSL capable loops in Texas. (Lewandowski Aff., ¶ 34.) Without the capacity to scale to meet such demand, current OSS cannot be said to permit nondiscriminatory competitive opportunities to DSL CLECs.[40]

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[39] Most importantly, SWBT is required to create a real-time, mechanized loop makeup database for competitors to access during preordering and SWBT must eliminate the loop qualification requirement. See Texas Arbitration Award at pgs. 60, 74. NorthPoint does not undertake to reiterate, here, all of the requirements of that arbitration ruling or the determinations of current deficiencies, as these are adequately set forth in the concurrent ALTS filing.

[40] See BA-NY 271 at ¶ 169. While the Commission has retreated in its previous view that the absence of flow-through is a de facto indicator of the absence of scalability, it has since refined its test to examine whether, in the absence of flow-through, a BOC can nevertheless demonstrate capacity to meet current and future demand. Given SWBT's own inability to proffer data to demonstrate such capacity, the difficulties suffered by NorthPoint in processing orders, and the inherent limitations in SWBT's present systems, SWBT appears to fail the Commissions' most recent iteration of this test.

III. Conclusion

Because SWBT has not and cannot demonstrate that it offers access to unbundled loops and nondiscriminatory access to OSS to facilitate the delivery of NorthPoint's advanced services, the Commission cannot approve SWBT's Application to provide InterLATA services in Texas at this time. SWBT should immediately undertake to measure and assess, cooperatively with DSL CLECs and third-parties, the current quality and results of SWBT's DSL loop pre-ordering, ordering and provisioning processes in order to provide the Commission a basis upon which to assess SWBT's claims.

RESPECTFULLY SUBMITTED,

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